

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

May 5, 2022 at 2:00 p.m.

1. [22-90041-E-11](#) **AREAX INC.**
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-7-22 [1]**

Debtor's Atty: David C. Johnston

Notes:

Continued from March 24, 2022. Neftali Alberto, the Responsible Representative of the Debtor in Possession to appear in person - No Telephonic Appearance Permitted.

Trustee Report at 341 Meeting lodged 4/11/22. Debtor appeared. Meeting of Creditors continued to 5/2/22 at 11:00 a.m.

Outstanding filing documents filed 4/27/22 [Dckt 20]

MAY 5, 2020 STATUS CONFERENCE

Since the prior Status Conference that the principal of the Debtor did not appear, a number of amended pleadings have been filed. These include the following:

A. Schedules A/B - H; Dckt. 20. The information in the Schedules Include:

1. Schedule A/B

- a. The Debtor had no cash or deposit accounts when the case was filed.
- b. Debtor had \$3,000 in accounts receivable.
- c. Debtor has no inventory, office furniture or equipment, no machinery or equipment.
- d. Debtor lists having a fee simple interest in two real properties, one valued at \$250,000 and the other at \$350,000.

May 5, 2022 at 2:00 p.m.

- Page 1 of 24 -

- e. Debtor asserts having a counter-claim for indemnity regarding the Koftinow Lawsuit, which indemnity counter-claim is stated to be of unknown value.
 - f. Other than the \$3,000 in accounts receivable and the interests in the two real properties, there no other assets (except for a possible indemnity claim) owned by Debtor that are now property of the Bankruptcy Estate.
2. Schedule D, Secured Claims
- a. Creditor Hahn is listed as having a claim for (\$385,000) against one of the real properties stated to be worth \$350,000.
 - (1) Other creditors stated to have an interest in this property are the Stanislaus County Tax Collector and Debra Koftinow.
 - b. Creditor Koftinow is listed as asserted a \$115,000 secured by a deed of trust on the \$350,000 property, which claim is disputed.
 - c. Creditor Jayco is identified as a creditor having a claim for (\$176,000) secured by a deed of trust against the property with a value of \$250,000, which claim is disputed.
3. Schedule E/F, No priority unsecured claims are listed, and with respect to the general unsecured lists:
- a. Creditor Capital One Bank is listed as having the only general unsecured claim for (\$7,218.00).

B. On the Statement of Financial Affairs

1. Debtor states having Annual Gross Income of:
- a. 2022 - Jan 1 to Feb. 7 Filing.....\$ 0.00
 - b. 2021.....\$10,000 (state to be “at most”)
 - c. 2020.....\$1,002,000
2. There was one state court action pending, *Koftinow v. McManis, et al.*, involving a judicial foreclosure on one of the two properties of the Debtor.

As of the court’s May 2, 2022 review of the Docket, no Status Report had been filed by the Debtor in Possession.

Review of Proofs fo Claim Filed

Though not listed on Schedule E/F, the Internal Revenue Service has filed Proof of Claim 2-1 asserting a Claim for \$8,334.70, of which \$544.70 is listed as a priority claim. These taxes date back to 2018, 2019, and 2021, and state that no tax return has been filed for 2021.

At the Status Conference, **XXXXXXX**

MARCH 22, 2022 STATUS CONFERENCE

The Trustee's Report of the First Meeting of Creditors states that the Responsible Representative of the Debtor and the Debtor in Possession did not appear at the First Meeting of Creditors. March 21, 2022 Docket Entry Report.

No status report has been filed by the Debtor in Possession. No Schedules or Statement of Financial Affairs has been filed by Debtor. The Petition and the Resolution of the Board of Directors is signed by Neftali Alberto as the sole director and identifies him as the president of the Debtor corporation. Dckt. 1.

This name seemed familiar to the court, and a search of the court records shows three filed and dismissed bankruptcy cases for Neftali Jesus Alberto:

Chapter 13 Case 20-90017

Filed.....January 7, 2020
Dismissed.....March 6, 2020

In the Petition, individual debtor Neftali Jesus Alberto states under penalty that his DBA (fictitious name under which he does business personally) is Area X, Inc. On Schedule A/B Neftali Jesus Alberto states under penalty of perjury that he owns no stock in either publicly traded or non-publicly traded incorporated or unincorporated business. 20-90017; Schedule A/B, ¶¶ 18, 19; Dckt. 1. However, on the Statement of Financial Affairs, Question 27, Neftali Jesus Alberto, sales he is a member of a limited liability company or limited partnership named "Area X, Inc." If such was a limited liability company or a limited partnership, it could not state that it was an "Inc."

Chapter 13 Case 19-91091

Filed.....December 17, 2019
Dismissed.....January 6, 2020

In this case, debtor Neftali Jesus Alberto again states under penalty of perjury that his person DBA (doing business as) for doing his personal business is "Area X, Inc." 19-91091; Dckt. 1 at 2.

Chapter 13 Case 19-90973

Filed.....October 30, 2019
Dismissed.....December 18, 2019

In this case, debtor Neftali Jesus Alberto again states under penalty of perjury that his person DBA (doing business as) for doing his personal business is “Area X, Inc.” 19-90973; Dckt. 1 at 2. On Schedule A/B debtor Neftali Jesus Alberto states under penalty of perjury that he owns no stock in any entities. *Id.*, Schedule A/B Questions 19, 20. He also states under penalty of perjury that he is a member of a limited liability company or limited partnership that identifies itself as a corporation - Area X, Inc. *Id.*; Stmt of Fin Affairs, Question 27.

The California Secretary of State identifies Area X, Inc. as a active corporation in California, not a DEB of Neftali Alberto doing business personally. ^{Fn.1.}

FN. 1. <https://businesssearch.sos.ca.gov/CBS/Detail>.

It is also interesting in reviewing the Schedule I’s filed in the prior cases, while stating he is employed by Area X, Inc., Debtor states under penalty of perjury that he is paid no wages or commissions, but that he has \$10,250 in net income in operating his business (19-90973; Dckt. 21 at 19-20; and 20-90017; Dckt. 1 at 27-28). Debtor shows not paying any state or federal income tax or self-employment tax if he is doing business personally on the Schedules J filed in the prior cases. No basis is shown for Neftali Alberto to not have to pay income taxes on more than \$120,000 in net annual income. In addition to his \$120,000 in income, Debtor states that his non-debtor Spouse has \$7,699 in monthly income, which is an additional \$92,388, for which the non-debtor spouse in annual income. This results in Debtor and his non-debtor spouse having \$212,388 in income for which they pay (\$955) a month in federal and stated income taxes and Social Security through withholding on the non-debtor spouses income.

Because Area X, Inc., the Debtor in the present case, has not filed Schedules, the court and parties in interest does not have information to see what the Debtor is and whether it is merely the DBA for Neftali Alberto.

At the Status Conference, the court addressed some substantial shortcomings by the Debtor in this case, as well as Neftali Jesus Alberto, the responsible representative of the Debtor in Possession. Additionally, it appears that Mr. Alberto made knowing, substantial false statements under penalty of perjury in his personal bankruptcy cases.

At the Status Conference the U.S. Trustee directed to the court to another case, Primo Farms, LLC, in which Mr. Alberto is identified as the principal. 20-90779. Mr. Alberto does not state any interests in Primo Farms, LLC in his bankruptcy cases.

There are substantial possible events of misconduct in the Primo Farms, LLC case, which the Subchapter V and U.S. Trustee are investigating, by its members. There may well be substantial claims for breach of fiduciary duty, violation of the automatic stay, and other provisions of Federal Law.

The presence of Mr. Alberto is necessary, both and the First Meeting of Creditors and at the continued Status Conference. The court shall order Mr. Alberto to be at both the continued Status Conference and First Meeting of Creditors, with the imposition of a \$2,500.00 corrective sanction if he fails

to appear. In light of the conduct of Mr. Alberto and the assets at issue, the court concludes that a \$2,500.00 sanction is corrective, and something Mr. Alberto can avoid paying by merely complying with the court's order to appear.

The court shall issued an order for the continued Status Conference and Order to Appear which includes:

IT IS FURTHER ORDERED that Neftali Alberto, the Responsible Representative of the Debtor in Possession, shall appear in person at the 2:00 p.m. on May 5, 2022 continued Status Conference – **NO TELEPHONIC APPEARANCE PERMITTED** FOR Neftali Alberto.

IT IS FURTHER ORDERED that if Neftali Alberto fails to appear at the continued Status Conference, the court shall order a \$5,000.00 corrective sanction to be paid immediately by Mr. Alberto. The court determines the \$5,000.00 amount to be corrective in light of the information in this case and the assets in the related case on Primo Farms, LLC. This corrective sanction may be avoided by Mr. Alberto complying with this order.

If Neftali Alberto fails to appear at the Status Conference, in addition to referring this non-compliance of this court's order to the United States District Court Chief Judge for consideration of any further corrective or punitive sanctions to be ordered, the court may also issue an order for the U.S. Marshal to take Neftali Alberto into custody sufficiently in advance of the further continued Status Conference date to be able to deliver him timely at court for the further continued Status Conference.

IT IS FURTHER ORDERED that Neftali Alberto, the Responsible Representative of the Debtor in Possession, shall appear in person at the April 11, 2022, 10:00 a.m. continued First Meeting of Creditors **TELEPHONIC APPEARANCE PERMITTED**.

IT IS FURTHER ORDERED that if Neftali Alberto fails to appear at the continued Status Conference, the court shall order a \$5,000.00 corrective sanction to be paid immediately by Mr. Alberto. The court determines the \$5,000.00 amount to be corrective in light of the information in this case and the assets in the related case on Primo Farms, LLC. This corrective sanction may be avoided by Mr. Alberto complying with this order.

If Neftali Alberto fails to appear at the Status Conference, the court may refer this non-compliance of this court's order to the United States District Court Chief Judge for consideration of any further corrective or punitive sanctions to be ordered.

Order, Dckt. 16.

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/27/22 in light of the Subchapter V Trustee continuing the investigation and the U.S. Trustee reviewing the issues and taking such action as appropriate.

Subchapter V Trustee's 2nd Status Report filed 4/27/22 [Dckt 106]

The Status Conference is XXXXXXX

MAY 5, 2022 STATUS CONFERENCE

The Subchapter V Trustee filed his 2nd Status Report on April 27, 2022. Dckt. 106. The Trustee's report begins with the statement that he recommends this case be dismissed and matters referred to the U.S. Attorney.

He does not support conversion of this case to one under Chapter 7, indicating that a Chapter 7 trustee would be dropped into a quagmire (the court's characterization) and be ill equipped to deal with the mess (again, the court's characterization). While a panel Chapter 7 trustee may be ill equipped to address the mess, this may be a rare case where the U.S. Trustee, with the backing of the federal government for funding, would be the Chapter 7 trustee. 11 U.S.C. § 701(a)(2).

The Subchapter V Trustee reports that in attempting to investigate the alleged demand for default interest, and not the amount specified in the confirmed plan, the purported dissolution of the Debtor (in apparent violation of the automatic stay), and the "unknown" junior deeds of trust, he was "stonewalled" by all parties in interest with the exception of Mr. Cary Hahn.

The Subchapter V Trustee recounts having made demand on the Law Firm which served as the foreclosure trustee of the Debtor's Hayward property for the excess proceeds from the foreclosure says, he received no response. He then contacted the apparent senior partner of the Law Firm, and attached the email thread of communications to the 2nd Status Report.

With respect to obtaining information from Mr. McManis, one of the co-owners of the Debtor, he has received no response to his inquiries made to Mr. McManis.

For Mr. Alberto, the other owner of Debtor, Mr. Alberto has not responded to the Subchapter V Trustee's request for information.

The Subchapter V Trustee reports that Mr. Cary Hahn was responsive to the Subchapter V Trustee's requests for information, providing detailed information in response.

In his recommendations, the Subchapter V Trustee expresses frustration and concern over the failure of the two members of Debtor (and the only two members of Debtor) and the one serving as managing member, who, as the court notes have fiduciary duties as responsible representative of Debtor in this case and as members with respect to creditors and handling of the assets of Debtor, have failed to respond. The Subchapter V Trustee expresses concerns over the conduct of the two members, who make it appear that they are acting separately (but as the court notes, fail to act on behalf of the Debtor, whether Debtor individually, as fiduciary debtor in possession, or fiduciary plan administrator, take action against what they express as improper conduct of the other).

He concludes that there do not appear to be any assets remaining to be administered, and at this juncture, what remains are actions, whether creditor funded, for asserted improper conduct with respect to the bankruptcy estate, plan estate, and breach of the Plan, as well as referral to the U.S. Attorney.

With respect to assets, it is not clear to the court why such have not been, or would not quickly be, turned over to be deposited with the Clerk of the Court pending further order of this court. If they are surplus funds from the sale of property of the Plan estate. 11 U.S.C. § 1186 states that when a Plan is confirmed, the property of the bankruptcy estate includes post-confirmation property acquired by Debtor. Further, it provides that the Debtor is in possession of property of the estate post-confirmation.

This bankruptcy estate was awash in assets sufficient for the liquidation plan to provide for a 100% dividend to creditors holding general unsecured claims. Order Confirming, With Plan Attached; Dckt. 76.

In addition to jurisdiction over property of the bankruptcy estate, the Plan (§ 8.09) provides for a broad post-confirmation federal court jurisdiction, which is consistent with the Bankruptcy Code (emphasis added):

8.09. Retention of jurisdiction. The Court will retain jurisdiction after the effective date with respect to matters which are necessary to carry out the provisions of this Plan, including but not limited to the following matters:

- (a) To hear and determine objections to claims, and to allow or disallow claims, including claims arising from the rejection of executory contracts;
- (b) To hear and determine actions to avoid and recover preferential transfers under 11 U.S.C. § 547;
- (c) **To hear and determine disputes as to the nature, extent, and validity of liens;**
- (d) To fix and award compensation to professional persons;
- (e) **To recover all assets of the Debtor, wherever located, to the extent necessary for the consummation of this Plan;**
- (f) To interpret the provisions of this Plan, and to make any orders which may be necessary or convenient to carry out the provisions of this Plan; and

(g) To administratively close the case and to reopen it in the future.

The above Plan is signed by “Neftali Alberto, Managing Member.”

At the Status Conference **XXXXXXX**

JANUARY 27, 2022 STATUS CONFERENCE

On January 18, 2022, Walter R. Dahl, Esq., the Subchapter V Trustee, filed a Status Report. He does not recommend conversion or the dismissal of the Bankruptcy Case at this time. The Trustee intends to pursue an investigation of matters, including the demands for default interest made in contravention of the confirmed Plan, and the actions of the two principals purporting to dissolve the Debtor during this case and then forming a new limited liability company with the same name.

On January 24, 2022, a Declaration of Neftali Alberto, the managing member of the Debtor, was filed. Dckt. 103. Mr. Alberto’s testimony includes a statement that the other member, Mark McManis filed a document with the Secretary of State, a Certificate of Cancellation, in which it inaccurately stated that all members of the Debtor had voted to dissolve.

He testifies that he was unaware of this until Mid-July 2021, when he learned of the purported dissolution when he was trying to close the sales as required under the Plan. Mr. Alberto, the responsible representative for the Debtor/Plan Administrator, states that he took the legal advice of an escrow office to just set up a new limited liability company with the same name so they could close escrow.

He also provides testimony that Lending Home placed a demand in escrow for the sale of the Sycamore Avenue Property, with a demand for “default rate interest” rather than the 7% provided under the confirmed plan. He also provides some testimony about unknown liens for unknown debts, dating back to when Mark McManis was the managing member.

At the Status Conference, the Subchapter V Trustee reported that he is proceeding with his investigation.

The court continues the Status Conference in light of the Subchapter V Trustee continuing the investigation and the U.S. Trustee reviewing the issues and taking such action as appropriate.

DECEMBER 2, 2021 STATUS CONFERENCE

The Debtor/Plan Administrator filed a Status Report on November 26, 2021. Dckt. 94. The Debtor/Plan Administrator reports that the Confirmed Plan provided for the sale of three houses by July 31, 2021, after which date the creditor with the secured claim(s) could foreclose.

Unfortunately, the sales escrows were delayed to numerous issues, and the lenders have foreclosed on all three homes. The Debtor/Plan Administrator identifies several of these issues as:

- A. A dissolution of the Debtor, without the consent of the managing member, that occurred on May 28, 2021.

It is unclear to the court how a Debtor, in a bankruptcy case, can be “dissolved,” as well as how such “dissolved” Debtor could purport to continue to serve as a plan administrator and a party in these federal court proceedings.

The Plan in this case was confirmed by an order entered on June 10, 2021. Dckt. 76.

- B. That the lenders submitted payoff demands into escrow that violated/breached the terms of the confirmed plan. This violation/breach is stated to be making demands for default interest, which was not the interest provided in the Plan that bound these lenders and the Debtor/Plan Administrator.

The Status Report does not identify what action the Debtor/Plan Administrator took to enforce the Plan or intends to take with respect to the breach of the Plan.

At the Status Conference, counsel for the Debtor/Plan Administrator could not identify any steps taken by the Debtor/Plan Administrator to enforce the Confirmed Plan or rights relating to the alleged breach of the Confirmed Plan.

- C. That when the title companies ran the preliminary title reports there were junior liens on the homes, which if paid, would consumer all of the proceeds, leaving nothing for the Plan.

The Status Report does not identify these persons who were owed debts secured by the homes (property of the bankruptcy estate and subject to the plan) and what such debts (secured claims) were. It also does not state how such creditors with secured claims were unknown to the Debtor/Debtor in Possession and not included in the Plan.

At the Status Conference, counsel for the Debtor/Plan Administrator identified the creditors alleged to have breached the plan, but did not identify who were the purchasers of the properties from the foreclosing creditors.

The Debtor/Plan Administrator suggests in the Status Report that the Status Conference to continued in light of the Debtor/Plan Administrator having lost all of the property that was part of the Bankruptcy Estate and became property under the Confirmed Plan, so that Debtor/Plan Administrator can file a motion to dismiss this case.

In looking at the California Secretary of State’s website, she report that Primo Farms, LLC, which was registered September 19, 2013, was “Cancelled.” The documents provided on the Secretary of State’s Website include the following:

- A. Cancellation Statement is signed by Mark McManis, which has a file date of May 27, 2021.
 - 1. It states that the cancellation was made by a vote of “ALL” of the members of Primo Farms, LLC.

2. It states that upon the effective date of the Certificate of Cancellation, Primo Farms, LLC's "registration is cancelled and **its powers, rights and privileges will cease in California.**"

- B. Statement of Information filed on April 27, 2020, for Primo Farms, LLC states that the manager is "neftali alberto," who is located at 2405 Kansas Ave, Modesto, California. It also identifies the agent for service of process as being Mark McManis, located at 9634 Cabernet Court, Patterson, California. Mr. McManis is not identified as a managing member of the LLC. The Statement of Information is signed by Mark McManis, whose title is "agent," and not by "neftali alberto," the managing member.

The Secretary of State reports that another entity named Primo Farms, LLC was registered on July 15, 2021. The LLC Registration - Articles of Organization filed on July 15, 2021, identifies a Neftali J. Alberto, located at 2405 Kansas Avenue, Modesto California as the sole managing member and the agent for service of process. Consistent information is provided on the Statement of Information for the new Primo Farms, LLC filed on July 20, 2021.^{FN.1.}

FN. 1.

<https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=LPLLC&SearchCriteria=pri+mo+farms&SearchSubType=Keyword>

The court does not reference the Secretary of State Official Website information and documents as "evidence" being submitted to the court, but to provide such publically available information in connection with the discussion at the Status Conference.

The Chapter 11 Petition is signed by Neftali Alberto, as the managing member of Debtor. Dckt. 1 at 4. Mr. Alberto signed the Statement Regarding Authority to Sign and File Petition and Resolution of the Members of Primo Farms, LLC to file the bankruptcy case. *Id.* at 5, 6.

On the Statement of Financial Affairs, the sole managing member of Debtor identified as Neftali Alberto, who has a 50% interest. The other member, but not a managing member, is identified as Mark McManis, who has a 50% interest. Stmt. Fin. Affairs, Question 28; Dckt. 22 at 7.

In the Status Report, it states that the Debtor/Plan Administrator was dissolved without the consent of the 50% managing member, Mr. Alberto. That would mean that Mr. McManis, who held 50% of the member interests in the Debtor forced the immediate dissolution of the Debtor/Plan Administrator – with the fiduciary Debtor/Plan Administrator helpless to protect the assets to be used in the Plan to pay creditors. See Cal. Corp. Code § 17707.01(b) providing that dissolution of an LLC can be done by a vote of 50% or more of the membership.

If the Debtor/Plan Administrator was dissolved by the act of Mark McManis in May 27, 2021, then that may well have left the fiduciary Debtor/Plan Administrator neutered and unable to fulfill its, and its members', fiduciary duties arising under Federal Law and the Confirmed Chapter 13 Plan (which confirmation order was entered on June 10, 2021, after the Debtor/Plan Administrator is stated to have been dissolved.^{FN.2.}

FN. 2. Since the member chose to dissolve the Debtor/Debtor in Possession prior to confirmation, then such attempt may have been in violation of the stay and void.

Additionally, failing to disclose that the Debtor/Debtor in Possession had been dissolved before the court entered the order confirming the Plan, which rendered the information provided to the court upon which confirmation was based to be incorrect.

While California Corporations Code § 17707.06 allows a dissolve limited liability to prosecute actions by or against it in order to collect and discharge obligation, disposing of and conveying its property, and collecting and dividing its assets, here it was serving as the fiduciary plan administrator. Additionally, by being “dissolved,” rather than an active, operating entity, it may not have had the assets or ability to perform its fiduciary duties.

As is clear from the context of the court’s comments above, this situation where creditors are stated to have violated the Plan, the Debtor/Plan Administrator having been purportedly “dissolved” out from under this federal court, the “dissolved” Debtor/Plan Administrator purporting to be the plan administrator and continuing to appear in this case, no action taken to address breaches of the Plan by creditors, and there being undisclosed creditors with secured claims, a swift dismissal of this case may be premature. It may be that the Subchapter V Trustee, reporting these events to the U.S. Trustee, may necessitate the U.S. Trustee investigating what has occurred.

At the Status Conference, counsel for the Debtor/Plan Administrator could not present the court with any action that the Debtor/Plan Administrator had taken to enforce the Confirmed Plan or enforce any rights relating to breaches of the Plan terms and the purported dissolution of the Debtor while it was in the Chapter 11 case and the automatic stay was in full pre-confirmation force and effect.

3. [20-90544-E-7](#) **MICHELLE PIMENTEL-MONTEZ** **PRE-TRIAL CONFERENCE RE:**
[20-9012](#) **LIONUDAKIS ET AL V.** **COMPLAINT FOR**
PIMENTEL-MONTEZ **NONDISCHARGEABLE DEBT, ET AL.**
11-2-20 [\[1\]](#)

Plaintiff's Atty: Jamie P. Dreher
Defendant's Atty: David C. Johnston

Adv. Filed: 11/2/20
Answer: 11/28/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Scheduling order –
Initial disclosures by 1/8/21
Non-Expert close of discovery by ~~4/30/21~~; ~~6/30/21~~; ~~8/30/21~~; ~~9/30/21~~; ~~11/30/21~~; ~~3/1/22~~; 4/1/22
Disclose expert witnesses by ~~5/30/21~~; ~~7/30/21~~; ~~9/30/21~~; ~~10/31/21~~; ~~12/31/21~~; 4/1/22
Disclose rebuttal expert witnesses by ~~6/30/21~~; ~~8/31/21~~; ~~10/31/21~~; ~~11/30/21~~; ~~1/31/22~~; 4/15/22
Dispositive motions heard by ~~8/31/21~~; ~~10/31/21~~; ~~12/31/21~~; ~~1/31/22~~; 3/31/22
Pretrial Conference set for ~~9/30/21~~; ~~12/2/21~~; 5/5/22
Pretrial Conference Statements Due by ~~1/23/22~~; ~~2/23/22~~; 4/23/22

Plaintiffs Phillip Lionudakis; Lionudakis Firewood, Inc.; and Lionudakis Orchard Removal, Inc.'s Pretrial Conference Statement filed 4/22/22 [Dckt 80]

Defendant Michelle A. Pimentel-Montez's Pretrial Statement filed 4/27/22 [Dckt 82]

The Pretrial Conference is xxxxxxx

SUMMARY OF COMPLAINT

The Complaint filed by Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Remove, Inc. (collectively "Plaintiff"), Dckt. 1, asserts claims seeking for the determination for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). The Complaint alleges that the Defendant-Debtor provided accounting services for Plaintiff. It is alleged that Defendant-Debtor obtained a loan from Plaintiff and material misrepresentations were made in the procuring thereof.

The damages asserted by the Debtor are in the amount of at least \$200,000.

SUMMARY OF ANSWER

Michelle Pimentel-Montez (“Defendant-Debtor”) filed an Answer, Dckt. 8, admitting and denying specific allegations made in the Complaint. The Answer also states seven affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Remove, Inc. alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 5, 6, 8; Dckt. 1. In the Answer, Defendant-Debtor Michelle Pimentel-Montez admits the allegations of jurisdiction and that this is a core proceeding and expressly consents to the entry of all final orders and judgment in this adversary proceeding by the bankruptcy judge. Answer ¶¶ 2, 3; Dckt. 8.

Plaintiff filed its Pretrial Conference Statement on April 22, 2022 (Dckt. 80) and Defendant filed her Pretrial Conference Statement on April 27, 2022 (Dckt. 82). The Parties have addressed the issues of this Adversary Proceeding in appropriate detail, clearly indicating that at this time there is not a resolution in the offing.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2022**.
- C. Defendant-Debtor shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2022**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2022**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2022**.
- F. The Trial shall be conducted at ----**x.m. on -----, 2022**.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, -----, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Jurisdiction and Venue:

Plaintiff Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Remove, Inc. alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint. In the Answer, Defendant-Debtor Michelle Pimentel-Montez admits the allegations of jurisdiction and that this is a core proceeding and expressly consents to the entry of all final orders and judgment in this adversary proceeding by the bankruptcy judge.

Undisputed Facts (strikeouts identify the Facts which Defendant-Debtor states are disputed):

1. Plaintiff Phillip Lionudakis is a natural person who, at all relevant times resided in Stanislaus County, California.
2. Plaintiff Lionudakis Firewood is a registered California corporation licensed to do business in the State of California. Mr. Lionudakis is the President and Chief Executive Officer of Lionudakis Firewood.
3. Plaintiff Lionudakis Orchard Removal is a registered California corporation licensed to do business in the State of California. Mr. Lionudakis is the President and Chief Executive Officer of Lionudakis Orchard Removal.
4. Defendant Michelle Pimentel-Montez is a natural person who, at all relevant times resided in Stanislaus County, California.
5. Plaintiff Phillip Lionudakis was born on January 3, 1950, and is currently 72 years old.
6. Defendant is a licensed Certified Public Accountant and operates a business known as "Michelle A. Pimentel-Montez, CPA" located in Modesto, California.
7. The East San Joaquin Water Quality Coalition is a 501(c)(5) non-profit organization.
8. Defendant was the chapter 7 debtor in the bankruptcy case styled *In re Pimentel-Montez*, Bankr. E.D. Cal. Case No. 20-90544-E-7 ("Bankruptcy Case"), Sacramento Division.
9. For several years preceding the events giving rise to this action, Mr. Lionudakis retained Defendant for accounting services.
- ~~10. By virtue of their accountant-client relationship, Mr. Lionudakis trusted Defendant to deal with him honestly, prudently, and with due care.~~
11. Defendant obtained \$321,000 from her client Sierra Analytics, Inc. on or before November 22, 2019.

12. On December 11, 2019, Defendant requested Mr. Lionudakis loan her \$200,000. Defendant represented she needed the loan on a short-term basis for a family investment.

Defendant assured Mr. Lionudakis that the loan amount would be repaid promptly within a matter of days. Defendant did not tell Mr. Lionudakis that the loan would be used for a purpose in any way connected to Keanu Reeves, the Illuminati, or the Al Majid Group.

13. Defendant requested the loan amount from Mr. Lionudakis despite that she had not received repayment, or a promise to make repayment, of her initial \$321,000 payment to “John Michael”, “William Benson”, and “Philips David” from any person associated with the Al Majid Group or the Illuminati.

14. On December 11, 2019, Mr. Lionudakis issued, through the Lionudakis Businesses, three separate cashier’s checks: (1) Check No. 1003215745 in the amount of \$100,000.00 payable to Defendant; (2) Check No. 1003215756 in the amount of \$60,000.00 payable to Defendant; and (3) Check No. 1003215762 in the amount of \$40,000.00 payable to Defendant.

15. On December 11, 2019, Defendant deposited the cashier’s checks issued by the Lionudakis Businesses, into her account at Tri-Counties Bank, ending in 8369. Defendant then purchased three separate cashier’s checks from Tri Counties Bank all payable to Tri-Counties Bank: (1) Check No. 13008 in the amount of \$60,008.00; (2) Check No. 13009 in the amount of \$70,008.00; (3) Check. No. 13010 in the amount of \$70,008.00.

16. On December 11, 2019, Defendant purchased three cashier’s checks from Tri-Counties Bank: (1) Check No. 107205932 in the amount of \$60,000.00 payable to “John Michael”; (2) Check No. 107205933 in the amount of \$70,000.00 payable to “William Benson”; (3) Check No. 107205934 in the amount of \$70,000.00 payable to “Philips David”.

17. The Defendant executed a document entitled “IOU”, dated December 11, 2019, in which she promised to repay \$100,000 to Lionudakis Firewood.

18. The Defendant executed a document entitled “IOU”, dated December 11, 2019, in which she promised to repay \$100,000 to Lionudakis Orchard Removal.

19. The Defendant executed a document entitled “Promissory Note”, dated December 11, 2019, whereby Defendant and her former spouse, Scott Montez, would repay Mr. Lionudakis the loan amount within one month at 14% interest, and the loan would be secured with deeds of trust on three pieces of property located in Modesto, California, including the property located at 2100 Sherwood Ave, Modesto, California.

20. The Defendant made a series of hand-written changes to the promissory note, including that her first repayment would not be due until January 11, 2030, and that the loan would accrue interest at a rate of 10% per annum.

~~21. At the time Defendant executed these documents she had no intent to comply with their terms.~~

22. On December 11, 2019 and on December 26, 2019, Defendant’s house at 2100 Sherwood Ave,

Modesto, California, was actively listed for sale. Defendant's house at 2100 Sherwood Ave, Modesto, California, sold on June 23, 2020.

23. Despite that Defendant did not receive any repayment from Keanu Reeves, the Al Majid Group, or the Al Majid agents, Defendant continued to solicit money from others until she filed her voluntary petition for chapter 7 bankruptcy on August 27, 2020. Defendant did not tell any of the individuals she obtained money from that the investment in any way involved Keanu Reeves or a person she believed was Keanu Reeves.

24. Defendant owns bank accounts at Tri-Counties Bank corresponding to account numbers 8369, 7667, and 7332.

25. Defendant has a cryptocurrency exchange account with Gemini Trust Company, LLC ("Gemini").

26. Gemini is a cryptocurrency exchange and custodian that allows customers to buy, sell, and store digital assets. Gemini allows exchange account holders to link their bank accounts to their exchange account. Gemini exchange account holders may deposit U.S. dollars into their exchange account. Gemini exchange account holders may use U.S. dollars to purchase cryptocurrency.

Gemini exchange account holders may convert cryptocurrency to U.S. dollars. Gemini exchange account holders may withdraw U.S. dollars from their exchange accounts.

27. Between May 18, 2020 and August 21, 2020, Defendant wired \$1,105,500 into her Gemini exchange account from her account at Tri-Counties Bank ending in 7332.

Defendant-Debtor's Undisputed Facts

1. Defendant-Debtor agrees that the following stated Undisputed Facts by Plaintiff are undisputed:

1 through 9

11 through 20

22 through 27

Disputed Facts:

1. Disputes the Keanu Reeves, the Illuminati, the Al Majid Group, and the Al Majid agents explanation provided by Defendant-Debtor.
2. That Defendant-Debtor intended to repay Plaintiffs.

Disputed Facts:

1. That Defendant-Debtor made any false statements to Plaintiff.
2. That Plaintiff's loans were made to Defendant-Debtor based on an accountant-client relationship, stating that Defendant-Debtor asserts they were

<p>3. That monies were sent by Defendant-Debtor to John Michael, Philips David, and William Benson</p> <p>4. That Defendant-Debtor had \$0 in income pre-petition.</p>	<p>based on friendship.</p> <p>3. That Defendant-Debtor had any intent to deceive Plaintiff</p> <p>4. That Modesto Commerce Bank does not exist.</p> <p>5. Plaintiff-Debtor asserts that the promissory notes signed in favor of Plaintiff were signed under distress.</p> <p>6. That the funds given to Plaintiff-Debtor were misappropriated.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None anticipated.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None anticipated.</p>
<p>Relief Sought:</p> <p>1. Determination that \$200,000 claim is nondischargeable.</p> <p>2. Exemplary and punitive damages.</p>	<p>Relief Sought:</p> <p>1. That the debts are dischargeable</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. § 534(a)(2).</p> <p>2. 11 U.S.C. § 523(a)(4).</p> <p>3. 11 U.S.C. § 534(a)(6).</p>	<p>Points of Law:</p> <p>1. <i>Kawaauhau v. Geiger</i>, 523 U.S. 57 (1998)</p> <p>2. <i>Barboza v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702 (9th Cir. 2008)</p> <p>3. <i>In re Niles</i>, 106 F.3d 1456 (9th Cir. 1997)</p>
<p>Abandoned Issues:</p> <p>1. None</p>	<p>Abandoned Issues:</p> <p>1. None</p>
<p>Witnesses:</p> <p>1. Michelle Pimentel-Montez</p>	<p>Witnesses:</p> <p>1. Plaintiff Phillip Lionudakis</p>

2.	Phillip Lionudakis	2.	Defendant Michelle Pimentel-Montez
3.	Wendell Naraghi	3.	Custodian of records, Tri-Counties Bank
4.	Chris Taylor	4.	Investigating officers and custodian of records, Modesto Police Department.
5.	Peggy Naraghi		
6.	Norik Naraghi		
7.	Stewart Tunick		
8.	William J. McKinney		
9.	Parry Klassen		

Plaintiff Exhibits:

1. Three checks written by Plaintiffs on December 11, 2019, payable to Defendant
 - A. Check No. 1003215745 in the amount of \$100,000
 - B. Check No. 1003215756 in the amount of \$60,000
 - C. Check No. 1003215762 in the amount of \$40,000
2. Three cashier's checks purchased by Defendant on December 11, 2019 payable to TriCounties Bank
 - A. Check No. 13008 in the amount of \$60,008
 - B. Check No. 13009 in the amount of \$70,008
 - C. Check. No. 13010 in the amount of \$70,008
3. Three cashier's checks purchased by Defendant on December 11, 2019
 - A. Check No. 107205932 in the amount of \$60,000 payable to "John Michael"
 - B. Check No. 107205933 in the amount of \$70,000 payable to "William Benson"
 - C. Check No. 107205934 in the amount of \$70,000 payable to "Philips David"
4. Promissory Note dated December 11, 2019

5. IOU dated December 11, 2019
6. Defendant's Tri-Counties bank statements from November 2019 through January 2020 for accounts ending in 8369, 7667, 7332.
7. Defendant's Tri-Counties bank statements from the end of January 2020 through February 2020 for accounts ending in 8369, 7667, 7332.
8. Defendant's Tri-Counties bank statements from the end of February 2020 through March 2020 for accounts ending in 8369, 7667, 7332.
9. Defendant's Tri-Counties bank statements from the end of March 2020 through April 2020 for accounts ending in 8369, 7667, 7332.
10. Defendant's Tri-Counties bank statements from the end of April 2020 through May 2020 for accounts ending in 8369, 7667, 7332.
11. Defendant's Tri-Counties bank statements from the end of May 2020 through June 2020 for accounts ending in 8369, 7667, 7332.
12. Defendant's Tri-Counties bank statements from the end of June 2020 through July 2020 for accounts ending in 8369, 7667, 7332.
13. Defendant's Tri-Counties bank statements from the end of July 2020 through August 2020 for accounts ending in 8369, 7667, 7332.
14. Defendant's Tri-Counties bank statements from the end of August 2020 through September 2020 for accounts ending in 8369, 7667, 7332.
15. Defendant's Tri-Counties bank statements from the end of September 2020 through October 2020 for accounts ending in 8369, 7667, 7332.
16. Defendant's Tri-Counties bank statements from the end of October 2020 through November 2020 for accounts ending in 8369, 7667, 7332.
17. Defendant's Tri-Counties bank statements from the end of November 2020 through December 2020 for accounts ending in 8369, 7667, 7332.
18. Defendant's Tri-Counties bank statements from the end of December 2020 through January 2021 for accounts ending in 8369, 7667, 7332.
19. Defendant's Tri-Counties bank statements from the end of January 2021 through February 2021 for accounts ending in 8369, 7667, 7332.
20. Wire transfers made from Defendant's Tri-Counties bank account ending in 8369.
21. Wire transfers made to and from Defendant's Tri-Counties bank account ending in 7332.

22. Other cashier's checks purchased by Defendant from Tri-Counties bank payable to: Hana Stephen, Samson William, John Michael, Philips David, William Benson, Pamela Putnam, Grace Anderson, Jacob Daniel, and William Johnson.
23. Sierra Analytics, Inc. Articles of Incorporation.
24. Sierra Analytics, Inc. Statement of Information filed by Defendant March 31, 2015.
25. Sierra Analytics, Inc. Statement of information filed by Defendant August 9, 2021.
26. Checks made payable by Sierra Analytics, Inc. to Defendant from June 13, 2019 to April 28, 2020.
27. East San Joaquin Water Quality Coalition Articles of Incorporation.
28. East San Joaquin Water Quality Coalition Statement of Information filed January 17, 2020.
29. East San Joaquin Water Quality Coalition Statement of Information filed by Defendant on January 1, 2022.
30. 2020 East San Joaquin Water Quality Coalition Annual Report.
31. Checks made payable by East San Joaquin Water Quality Coalition to Defendant from October 2019 to February 2021.
32. Checks made payable by Naraghi Farms, LLC, Peggy and Wendell Naraghi, and Wendell Naraghi Farm and Business account, to Defendant from June 2019 to December 2020.
33. Check No. 1012 made payable to Defendant by Valley Water Collaborative.
34. Checks made payable by Taylor and Associates Benefits Services LLC and Chris Taylor to Defendant from April 2019 to August 2020.
35. Cashier's Check No. 3609115 made payable to Defendant by "WILLIAM MCINNY" dated November 22, 2019.
36. Zillow listing for 2100 Sherwood Ave Apt B, Modesto, California 95350.
37. Transcript of 341 Meeting of Creditors in the Matter of Michelle A. Pimentel-Montez, case no. 21-90585-cdj.
38. Print out of usbanklocations.com showing Modesto Commerce Bank inoperative as of 2003.
39. March 9, 2021 letter to Loris Bakken from CAMICO Mutual Insurance.
40. Transcript of the deposition of Michelle Pimentel-Montez.

41. Modesto Police Department Incident Report dated June 19, 2020, No. MP20017182.	
Defendant - Debtor Exhibits:	
<p>1. Defendant expects to introduce many of the same documents as the Plaintiffs:</p> <p style="padding-left: 40px;">Three checks written by the Plaintiffs to the Defendant on December 11, 2019.</p> <p style="padding-left: 40px;">Three cashier's checks purchased by the Defendant on December 11, 2019 (from Bank of the West).</p> <p style="padding-left: 40px;">Three cashier's checks purchased by the Defendant on December 11, 2019 (from Tri-Counties Bank).</p>	
Discovery Documents:	Discovery Documents:
1. Defendant's deposition transcript in its entirety	1. None Identified
Further Discovery or Motions:	Further Discovery or Motions:
1. None Anticipated	1. None Anticipated
Stipulations:	Stipulations:
1. None Anticipated	1. None Anticipated
Amendments:	Amendments:
1. None Anticipated	1. None Anticipated
Dismissals:	Dismissals:
1. None Anticipated	1. None Anticipated
Agreed Statement of Facts:	Agreed Statement of Facts:
1. None Anticipated	1. Believes that the facts surrounding the loans can be agreed to.

<p>However, as noted above, the Defendant-Debtor concurs that all of the undisputed facts set forth by Plaintiff are undisputed except for facts 10 and 21.</p> <p>The court will, as part of the order setting trial, include that those facts (excluding facts 10 and 21) are not in dispute and deemed Agreed Facts for which no further evidence to establish is required. This is without prejudice to providing related evidence as to the facts so agreed to.</p>	<p>See above stating undisputed facts agreed to by Defendant-Debtor.</p>
<p>Attorneys' Fees Basis:</p> <ol style="list-style-type: none"> 1. California Code of Civil Procedure § 1021. 2. <i>In re Baroff</i>, 105 F.3d 439, 440 (9th Cir. 1997) 3. <i>In re Tran</i>, 301 B.R. 576, 584 (Bankr. N.D. Cal. 2003) 	<p>Attorneys' Fees Basis:</p> <ol style="list-style-type: none"> 1. Asserts there is no agreement for attorney's fees.
<p>Additional Items</p> <ol style="list-style-type: none"> 1. None Identified 	<p>Additional Items</p> <ol style="list-style-type: none"> 1. None Identified
<p>Trial Time Estimation:</p>	<p>Trial Time Estimation: 2 Days.</p>

4. [19-90382-E-7](#) TRACY SMITH
[19-9012](#) CAE-1
ALVAREZ V. SMITH ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-26-19 [\[1\]](#)

Plaintiff's Atty: Shane Reich
Defendant's Atty:
Peter G. Macaluso [Tracy Emery Smith]
Unknown [Sharp Investor, Inc.]

Adv. Filed: 7/26/19
Answer: None

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Dischargeability - fraud as fiduciary, embezzlement, larceny
Recovery of money/property - other

Notes:
Continued from 4/7/22 by request of the Parties.

The Status Conference is XXXXXXX

MAY 5, 2022 STATUS CONFERENCE

As of the court's May 3, 2022 review of the Docket, no updates have been filed by the Parties since the last hearing.

At the Status Conference XXXXXXX

APRIL 7, 2022 STATUS CONFERENCE

The court's review of the Docket reflects that nothing has been filed by the Parties since the last hearing.

At the Status Conference, counsel for Judgment Debtor reported that the transfer of the home has been documented. June 29, 2019. The transferee was identified as Oliver Perry.

The Parties requested a further continuance.

MARCH 24, 2022 STATUS CONFERENCE

On March 23, 2022, twenty-four hours before this Status Conference, Defendant Judgment Debtor Tracy Smith filed his Third Post-Judgment Status Conference Statement. Dckt. 77. He states that Plaintiff Judgment Creditor and Defendant Judgment Debtor have met to discuss the transfer of a comparable home, and Judgment Debtor requests that the Status Conference be continued “until the completion of the location of such comparable home which the Defendant Judgment Debtor can deliver such to the Plaintiff Judgment Creditor. Apparently, the court is to delay the enforcement of it’s judgment for however long the Defendant Judgment Debtor believes it would take him to comply with this court’s Judgment and mandatory injunction.

At the Status Conference, the Parties provided vague references to their discussion. Judgment Debtor now asserts, two years after the judgment was entered and the mandatory injunction issued, that the property to be transferred had been “sold” and Judgment Debtor cannot transfer it. Plaintiff Judgment Creditor disputes that it was “sold,” stating that title is in the same name since 1980. Clearly something is amiss.

The court addressed with counsel for the Defendant Judgment Debtor the potential consequences of failing to comply with the order of a federal judge, which not only is the corrective sanction power in this court, but the corrective and punitive sanction power of the Article III judges from whom this bankruptcy case has been referred.

FEBRUARY 17, 2022 STATUS CONFERENCE

On February 7, 2022, Judgment Debtor Tracy Smith, filed his Second Post Judgment Status Conference Statement. In it he states that the Judgment has been entered in this Adversary Proceeding, and requests that the file now be closed.

The Judgment in this Adversary Proceeding is a monetary one for \$19,000.00, and also a Mandatory Injunction for Judgment Debtor to turn over a Mobile Home. The Status Report does not state that Judgment Debtor has turned over the property as ordered by this court. The Judgment provides for alternative relief in the form of a \$93,643.84 if the specific performance required by the Mandatory Injunction is not or can not be done.

Finally, the Judgement determines that the monetary amounts are nondischargeable.

At the Status Conference, Judgment Creditor reported that Defendant Judgement Debtor has not provided information about the asset. Counsel for Defendant Judgment Debtor did not know whether his client has complied with the court’s mandatory injunction, which is now almost two years old, to turn over the mobile home to Judgment Creditor Plaintiff. Counsel for Judgment Creditor Plaintiff could not cite to the court any efforts made to enforce the mandatory injunction in light of Judgment Debtor Defendant’s failure to comply with the injunction.

The court continued the Status Conference and ordered the parties and their counsel to appear in person at the continued hearing, and all further hearings unless relief is granted pursuant to a future order of the court, at the Status Conference and all further hearings, conference, and proceedings in this Adversary Proceeding.